

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
March 9, 2001 Session

BOBBIE WOODS v. MAYTAG JACKSON DISHWASHING PRODUCTS

**Direct Appeal from the Chancery Court for Madison County
No. 56456 Joe C. Morris, Chancellor**

No. W2000-02212-SC-WCM-CV - Mailed April 19, 2001; Filed September 10, 2001

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. In this appeal, the employer contends the evidence preponderates against the trial court's finding that the employee's claim for disability resulting from left carpal tunnel syndrome is not time-barred. As discussed below, the panel has concluded the judgment should be affirmed.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Chancery Court
Affirmed.**

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and W. MICHAEL MALOAN, SP. J., joined.

P. Allen Phillips and Jay Dustin King, Waldrop & Hall, Jackson, Tennessee, for the appellant, Maytag Jackson Dishwashing Products.

David Hardee, Hardee, Martin, Jaynes & Ivy, Jackson, Tennessee, for the appellee, Bobbie Woods.

MEMORANDUM OPINION

This civil action was commenced on August 23, 1999. For several years, the employee or claimant, Woods, has worked in production for Maytag. She gradually developed disabling left wrist pain in 1995 and was referred to Dr. William Bourland, who eventually performed release surgery and returned her to work after two weeks of recuperation. The doctor did not assign any permanent impairment rating and no disability benefits were paid although the claimant did have some residual symptoms. Her symptoms were minor and she was able to resume her duties, including repetitive use of a torque gun, but favoring her left hand.

She gradually developed right carpal tunnel syndrome and, in March 1999, was referred to Dr. R. Kelly Pucek. Dr. Pucek operated on her right hand and returned her to work, again including repetitive use of both hands. This time, the claimant favored her right hand and suffered a recurrence of her left carpal tunnel syndrome. She is left-handed.

Dr. Joseph Boals examined and evaluated the claimant after the surgery by Dr. Pucek. Dr. Boals testified that the injury to the left hand was an aggravation of the previous injury and that it increased the claimant's permanent impairment by approximately 15 percent, using AMA guidelines.

Upon the above summarized evidence, the trial court found, inter alia, that the claim for permanent partial disability benefits based on the injury to the left arm was not time-barred. The trial court specifically found that the claimant's left arm injury was aggravated and made worse by repetitive use at work; and that such aggravation resulted in an increased impairment, as Dr. Boals testified.

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). The reviewing court is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921, 922 (Tenn. Sp. Workers Comp. 1995).

An action by an employee to recover benefits for an accidental injury, other than an occupational disease, must be commenced within one year after the occurrence of the injury. Tenn. Code Ann. § 50-6-224(1). Where a condition develops gradually over a period of time resulting in a definite, work-connected, unexpected, fortuitous injury, it is compensable as an injury by accident. See Brown Shoe Co. v. Reed, 209 Tenn. 106, 350 S.W.2d 65 (1961). In such cases, however, unless the date of injury can be determined, compensation may be denied. The date of injury has been fixed as the date on which the claimant was forced to quit work because of severe pain. Barker v. Home-Crest Corp., 805 S.W.2d 373, 374 (Tenn. 1991). In that respect, a gradually occurring injury, although compensable as an injury by accident, is analogous to an occupational disease. By Tenn. Code Ann. § 50-6-306(a), the right to compensation for an occupational disease, other than coal worker's pneumoconiosis, is barred unless suit is filed within one year after the beginning of the incapacity for work resulting therefrom. Case law has developed a similar rule applicable to gradually occurring injuries. See Lawson v. Lear Seating Corp., 944 S.W.2d 340 (Tenn. 1997).

The claimant first developed symptoms of carpal tunnel syndrome in January 1995. The evidence shows that she became rehabilitated following corrective surgery and returned to work without restrictions or limitations. Because, however, of the repetitive trauma of her work, the condition was aggravated to the point where she became disabled again in March 1999, less than one year before she sued for disability benefits.

Citing Workman v. General Shoe Corp., 196 Tenn. 290, 265 S.W.2d 883 (1954), the

appellant relies on the rule that the worsening of a progressive injury does not affect the statute of limitations. In that case, Ms. Workman developed phlebitis in her left leg as a result of a work-related abdominal injury occurring on June 15, 1949, but did not assert her workers' compensation claim until more than one year later, December 14, 1951, following a fall at work. Her claim was barred by the statute of limitations. It is distinguishable from the present case, particularly in that Ms. Workman's condition was not shown to have resulted from repetitive trauma.

For that reason and because the evidence fails to preponderate against the findings of the trial court, the judgment of the Chancery Court for Madison County is affirmed. To reduce future litigation, the legislature may wish to adopt a statute similar to Tenn. Code Ann. § 50-6-306(a) but applicable to injuries which occur gradually as a result of repetitive trauma. Costs are taxed to the appellant, Maytag.

JOE C. LOSER, JR.

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No. 56456**

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JUDGMENT ORDER

This case is before the Court upon motion for review filed by the appellant, Maytag Jackson Dishwashing Products, pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well-taken and should be denied.

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs are taxed to the appellant, Maytag Jackson Dishwashing Products, and its surety for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Holder, J., not participating